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10/055,440	01/23/2002	Todd Bolzer	32183	7938

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/055,440
Filing Date: January 23, 2002
Appellant(s): BOLZER ET AL.

MAILED

MAY 05 2005

Group 3700

Thomas H. VanHoozer
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 2, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

Claims 1-4 are rejected and the subject of this appeal.

Claims 5-20 have been withdrawn.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection is correct.

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(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

Patents:

5,525,007	Jones et al.	06-1996
5,207,463	Seizert et al.	05-1993
4,187,647	Hall	02-1980
2,218,188	Wittenberg	10-1940

Publications:

A.K. Industries, Inc. (AKI)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by the catalog of AK Industries, Inc. (the AKI catalog).

The AKI catalog discloses a subterranean tank assembly for storing liquid below grade, the tanks comprising a vessel, a cover and a riser, page 12 provides a pictorial representation of a

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pump tank which shows the vessel, cover and riser connected together, various risers and lids are disclosed on page 7, the vessel, cover and riser are made of a synthetic resin material, specifically, polyethylene, the riser includes an inner cylindrical riser wall, axially spaced, circumscribing ribs spaced outwardly of the riser wall, the ribs including a pair of substantially horizontal flanges.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over the AKI catalog in view of Jones and Hall.

The AKI catalog discloses a subterranean tank assembly for storing liquid below grade, the tanks comprising a vessel, a cover and a riser, page 12 provides a pictorial representation of a pump tank which shows the vessel, cover and riser connected together, various risers and lids are disclosed on page 7, the vessel, cover and riser are made of a synthetic resin material, specifically, polyethylene, the riser includes an inner cylindrical riser wall, axially spaced, circumscribing ribs spaced outwardly of the riser wall, the ribs including a pair of substantially horizontal flanges. The vessel has a portal (access hole - see Fig. 1 in top right corner of page 6, also large opening has depicted at right side of page 6 is believed to be similar) projecting generally upwardly from the vessel wall, the portal includes a rim having a substantially horizontal circumferentially extending closure surface in surrounding relationship to a portal opening. The riser is best depicted on page 12 as being connected to the access opening and the cross section is shown in the top right figure on page 7.

The AKI catalog discloses the invention except for an inwardly tapering receiving surface on the portal rim of the vessel and an inwardly tapering complementary surface on the bottommost connector portion of the riser.

Jones teaches a sewer construction wherein the vessel is a tee fitting 16 having a bifurcated foot 34b situated at its top with a top portal rim (spigot 34c) and the riser is a bottom section (pipe encasement 36) with a bottommost connector (bell socket 36b). The rim includes a horizontal surface and an inwardly tapering receiving surface and the bottommost connector includes an inwardly tapering complementary surface mating with the receiving surface of the rim of the vessel.

Hall teaches a manhole structure wherein the vessel is manhole substructure 10 having a top ring 11 with a top portal rim and the riser is a bottom section (bottommost plastic extender ring 15) with a bottommost connector. The rim includes a horizontal surface and an inwardly tapering receiving surface and the bottommost connector includes an inwardly tapering complementary surface mating with the receiving surface of the rim of the vessel.

It would have been obvious to modify the configuration of the riser to vessel connection to include both a horizontal surface on the vessel rim and inwardly tapering surfaces to provide an aligning fit to ensure that the riser is properly centered and to ensure that the top of the riser is situated horizontally.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the AKI catalog in view of Jones and Hall as applied to claim 1 above, and further in view of Wittenberg.

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The combination discloses the invention except for the lug on the cover and the recess on the vessel rim. Wittenberg teaches in the Fig. 1-10 a cover that includes an interior wall surface having a least one lug oriented substantially radially inwardly and a vessel rim that includes an outer wall surface having at least one recess configured to receive the lug. It would have been obvious to add the lug and recess arrangement in order to provide a securing means that includes more than one direction of motion to both attach and remove the closure so that the closure isn't removed, inadvertently.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the AKI catalog in view of Jones and Hall as applied to claim 1 above, and further in view of Wittenberg and Seizert et al. (Seizert).

The AKI catalog discloses the invention except for the seal and the slot in the rim for receiving the seal. Wittenberg teaches in the Fig. 12 embodiment a circumferentially extending elastomeric seal 53 that is situated within a circumferentially extending slot on the rim. Seizert teaches a seal (44, 144, 244, 444) and a slot (22, 122, 222, 422), respectively. It would have been obvious to add the seal and slot arrangement to the rim in order to form a liquid tight seal with either a cover or another pipe connected to the vessel at the rim to prevent a liquid leak at this joint.

(10) Response to Argument

102 Rejection

Appellant argues that the following claim limitation is not disclosed:

“said flanges each being complementally sized and configured relative to said rim whereby said a circumscribing cut through one of said ribs or said riser wall adjacent said flange will reduce the longitudinal length of said riser and whereby the remaining, normally bottommost flange of the riser may be coupled to the rim in sealing engagement.”

This limitation is a functional limitation or process limitation. Therefore, there is no need for the tank, riser and cover combination disclosed by the AKI catalog to actually discuss this function or this process of using and making a shorter riser. The tank, riser and cover combination disclosed by the AKI catalog needs only to be capable of being modified by cutting the riser and modified by coupling and sealing the riser to the rim. The AKI catalog is capable of such modification.

Appellant makes the statement that “the riser doesn’t sealing engage with the rim of the tank at all, because the riser rests on the cast iron reinforcement collar, and there is a clearance between the rim of the tank and the inner wall of the riser” in line 7 of page 10 of the brief. The cast iron reinforcement collar appears to be a triangular shaped attachment with an aperture for reinforcing the upper edge of the tank and providing a lifting location for lifting lines or a sling

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used to lower the tank within a ground cavity as shown on page 12. It seems that appellant may be referring to the collar as a separate, cast iron piece which attaches the riser to the rim of the tank. This is not clearly shown. On page 6 of the AKI catalog, a side view is shown in the upper right hand corner. In this side view, the upper rim appears to have an upper rim with an inverted U-shaped configuration adjacent to the access hole. The rim appears to be of an integrally molded, one-piece construction.

Even if appellant's assumption that the collar is a separate piece needed for attachment of the tank and the rim is correct. Claim 1 doesn't preclude an interpretation of a tank with a separable collar wherein the collar includes a rim and therefore, the rim of the collar is the rim of the tank and the rim is directly sealingly attached to the riser.

Furthermore, claim 1 doesn't preclude an interpretation of indirect attachment. The tank having an upper rim, the collar being a separate piece that indirectly attaches the tank's upper rim to the riser.

The inwardly tapered surface is shown insofar as the flange of the riser that connects to the collar or the inner rim of the tank extends inwardly at an angle of exactly 90 degrees to the longitudinal vertical axis of the riser.

103 Rejection – the AKI catalog in view of Jones and Hall

Appellant ignores the language of the rejection made by identifying the riser of Jones as element 20 rather than element 36 as stated in the rejection.

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Appellant ignores the examiner's interpretation of the tapering of the surface of Hall as inwardly. Appellant has not sufficiently or convincingly argued that a downwardly and inwardly extending surface is not an inwardly tapering surface.

103 Rejection – the AKI catalog in view of Jones and Hall and further in view of

Wittenberg

Appellant distorts the problem being solved by stating that appellant was involved with the problem of an adjustable riser. Claim 2 has nothing whatsoever to do with an adjustable riser. The problem of claim 2 involves securing a cover, (i.e., “a cover including an interior wall surface having at least one lug”). Wittenberg is pertinent to the problem of securing a cover and is analogous art.

103 Rejection - the AKI catalog in view of Jones and Hall and further in view of

Wittenberg and Seizert

Appellant is correct in the assumption made in section 4. of the arguments at the first paragraph. This rejection should have stated claims 3 and 4 rather than claim 2.

Wittenberg and Seizert are analogous because they are pertinent to the problem of securing a connection and sealing the connection.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Stephen Castellano

Conferees:

njn *njn*
lwy *lwy*